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December 13, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room 204B
Washington, D.C. 20554

Re: Ex Parte Presentation in CC Docket No. 99-295

Dear Ms. Salas:

Pursuant to Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a) (1997), this is to provide an original and one copy of a notice of an *ex parte* presentation made today in the above-referenced proceeding on behalf of The Association for Local Telecommunications Services, Competitive Telecommunications Association, e.spire Communications, Inc., Focal Communications Corporation, Omnipoint Communications, Inc., and Teligent, Inc., which was made by Jonathan Askin, Douglas Bonner, Carl Hansen, Edward Krachmer, Richard Metzger, David Turetsky and the undersigned to Lawrence Strickling, Robert Atkinson, Claudia Pabo, and William Bailey of the Common Carrier Bureau and Carol Matthey, Michelle Carey, and John Adams of the Policy Division. The meeting was devoted to discussion of the foregoing parties' difficulties in obtaining special access arrangements from Bell Atlantic - New York ("Bell Atlantic"). During the meeting, the parties discussed their previously-filed *ex parte* letter in the above-referenced proceeding (dated December 1, 1999), Bell Atlantic's *ex parte* letter in the same proceeding (dated November 19, 1999), and Teligent's April 27, 1999 letter to Jacob Goldberg of Bell Atlantic. Copies of these materials are attached to this letter.

Focal also provided the foregoing Commission Staff with an oral update of Focal's difficulties in obtaining special access arrangements from Bell Atlantic. In particular, Focal stated that it has orders for 125 circuits outstanding and that it has not received firm order commitments ("FOCs") for 56% of the orders. Focal indicated that Bell Atlantic took an average of 32 calendar days per order to provide a FOC and that, on average, all of its orders are more than 51 calendar days old.

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Should any further information be required with respect to this *ex parte* notice, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Petrilla". The signature is fluid and cursive, with the first name "Tony" being more prominent than the last name "Petrilla".

Antony Richard Petrilla

Counsel for Focal Communications
Corporation

Enclosures

cc (w/enc.): Dee May (by hand)
Lawrence Strickling, Esq.
Robert Atkinson, Esq.
Carol Matthey, Esq.
Claudia Pabo, Esq.
Michelle Carey, Esq.
John Adams, Esq.
William Bailey, Esq.

December 1, 1999

BY HAND

Chairman William Kennard and Commissioners
Federal Communications Commission
445 12th Street, S.W.
Room 204B
Washington, D.C. 20554

**Re: Application by New York Telephone Company for Authorization to
Provide In-Region, InterLATA Services in New York; CC Docket No.
99-295**

Dear Chairman Kennard and Commissioners:

The undersigned providers of competitive telecommunications in New York respectfully ask the Commission to require Bell Atlantic – New York (“Bell Atlantic”) to comply with its Competitive Checklist obligation to provide combinations of dedicated transport and loop network elements, including special access facilities, to competitive carriers before Bell Atlantic is granted interLATA authority in this proceeding. As the Commission recently reaffirmed, an incumbent LEC’s provisioning of “high capacity dedicated transport offerings will encourage competition and facilitate the deployment of advanced services.”¹ We have introduced extensive evidence into this record demonstrating that Bell Atlantic has systemic problems provisioning and repairing dedicated transport to competitive carriers.² Despite the fact that these facilities are used by Bell Atlantic’s competitors for interconnection, internal network transport, and customer access, Bell Atlantic’s reply comments fail to acknowledge, far less propose any solution to, the unresolved problems in provisioning and repairing such critical facilities. Bell Atlantic simply declares that this issue is not covered by the Checklist and therefore is irrelevant to the outcome of its Section 271 application. Not only is Bell Atlantic wrong about dedicated transport not being a Checklist Item, but its analysis fails to recognize that Section 271 gives the Commission jurisdiction to consider various obstacles to competition in New York imposed by Bell Atlantic as part of the public interest analysis. 47 U.S.C. § 271(d)(3)(C); *see also* Teligent Comments, at 19-21. We are deeply concerned that this “defense by silence” might succeed in the short time allowed for the Commission’s deliberation under the Act. Consequently, we are making

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, ¶ 323 (rel. November 5, 1999) (“*UNE Remand Order*”).

² Focal Comments, at 5-6; *id.*, at Attachment A, ¶¶ 10-14; Omnipoint Comments, at 7-13; Omnipoint Reply Comments at 1, 8; Teligent Comments, at 14-19 (Teligent “has faced for the past ten months recurring provisioning problems with these [dedicated transport] facilities”).

a joint appeal to ensure that this important issue will be addressed and resolved in the Commission's order.³

We have reason to believe Bell Atlantic has discussed with Commission Staff its current inability to provision or repair dedicated transport facilities ordered by competitive providers. While we were not present at these meetings, we believe that Bell Atlantic likely argued that its current failures: (1) are largely attributable to its merger with NYNEX, which supposedly led to a failure to forecast increased demand for interoffice dedicated transport adequately; and (2) will supposedly be cured by the allocation of increased resources, as well as by Bell Atlantic's own economic self-interest in selling dedicated transport.

We do not question the good faith of any person who has promised Staff that this problem will be fixed. However, we have demonstrated in the present record that Bell Atlantic repeatedly has promised to resolve this issue, and those promises have gone unfulfilled over the past three years.⁴

More fundamentally, the claim that Bell Atlantic's economic self-interest can be trusted to provide a solution is specious. If anything, Bell Atlantic's economic incentive moves it in the other direction, leading it to undermine the ability of competitive providers to offer a competitive service using its dedicated transport. Accordingly, the Commission has no choice but to implement an effective enforcement plan to ensure that Bell Atlantic comes into, and stays within, compliance concerning this important matter.

³ Competitive providers such as the undersigned sometimes connect end users to their switches by purchasing special access arrangements from Bell Atlantic. These special access arrangements are functionally no different than Bell Atlantic's Expanded Extended Link ("EEL"), as the Commission recognized in its *UNE Remand Order*. In that decision, the Commission stated: "we note that incumbent LECs routinely provide the functional equivalent of the EEL through their special access offerings." *Id.*, at ¶ 481. Indeed, the Commission recognized that carriers could convert special access arrangements to unbundled network elements under 47 C.F.R. § 51.315(b), although it also ruled that such converted arrangements must carry a "significant" amount of telephone exchange service in addition to exchange access. *UNE Remand Order*, ¶ 480 ("the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices."); see *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order, CC Docket No. 96-98, at ¶5 (rel. November 24, 1999) ("*Supplemental Order*"). For these reasons, special access, as used by the undersigned, plainly qualifies as a combination of local transport and loops under the Competitive Checklist or, at the very least, falls under the Commission's jurisdiction to evaluate the impact of Bell Atlantic's Application upon the public interest. See 47 U.S.C. § 271(c)(2)(b)(v); 47 U.S.C. § 271(d)(3)(C). This letter will refer to such special access arrangements under the general term "dedicated transport."

⁴ See Omnipoint Comments, Affidavit of Dale Eckhoff, at 5 & Exhibit C (June 15, 1998 letter of Antonio Yanez of Bell Atlantic - "Omnipoint is a valued customer of Bell Atlantic"). For example, even during the recent period of May to October, 1999, Bell Atlantic has continued to miss 86% of its firm order commitment dates for twenty-eight DS-1 installations for Omnipoint. See Omnipoint Reply Comments at 1, 8. Similarly, Teligent states that despite a Bell Atlantic commitment by its senior management to deliver four T-1 facilities per day in New York, on average only two are delivered per day. Teligent Comments, at 15-16.

There are no practical obstacles to the creation of such a plan for Bell Atlantic's provisioning and repair of dedicated transport to competitive providers. We believe the statistical measures proposed by the New York Public Service Commission for interconnection can be employed if certain important corrections are first made.⁵ However, we also agree with the Department of Justice that the NYPSC's proposed penalties associated with non-compliance are entirely inadequate to affect Bell Atlantic's behavior.⁶ Consequently, we propose the following plan and penalties:

For Installations of Dedicated Transport:

- 1) Bell Atlantic's installation intervals must comply with the promised tariff interval or, in the absence of tariffed intervals, must not exceed a reasonable 30 calendar day interval. If Bell Atlantic issues an install date outside of the tariffed interval or, if applicable, the 30 day interval, it should be subject to a \$100 penalty per additional day.
- 2) Install dates may not be unilaterally changed by Bell Atlantic once they have been issued.
- 3) Bell Atlantic should provide five days advance notice in writing or by email of any anticipated missed install date that is Bell Atlantic's responsibility or any rescheduling of an install date, as well as a detailed explanation for the miss/rescheduling.
- 4) The penalties for missed install dates, other than "customer not ready" or "acts of god," should be as follows: \$100 for the first day, \$500 for the second day; \$1,000 for the third day and each day thereafter, per the equivalent number of DS-1 circuit(s).⁷
- 5) Bell Atlantic would issue a full credit for all non-recurring installation charges associated with any missed install date.
- 6) Bell Atlantic must reach agreement with the competitive provider's responsible representative that a "Customer Not Ready" ("CNR") characterization of an install miss is appropriate before Bell Atlantic creates a CNR business record.
- 7) Bell Atlantic must implement a detailed automated tracking system specifically for dedicated transport orders from competitive providers within three months of the Commission's Order in CC Docket No. 99-295.

⁵ The measurements should capture the installation interval between the time an accurate dedicated transport order is received by Bell Atlantic and the time that the end user accepts the facility as properly installed. The current measurements employ the date of Bell Atlantic's Firm Order Commitment ("FOC"). However, we demonstrated in our comments that FOCs are altered and revised at Bell Atlantic's complete discretion, and thus cannot be relied upon in any meaningful compliance plan. See, e.g., Focal Reply Comments, at 6. Furthermore, the current interconnection measurement needs to apply not just to interconnection, but to all dedicated transport facilities provided to competitive carriers, including internal network transport and access to a competitive provider's end users.

⁶ See DOJ Evaluation, at 38-40.

⁷ These penalties would not be in lieu of other remedies available to the parties under federal or state law.

For Dedicated Transport Outages:

- 1) In the context of conducting repairs, when Bell Atlantic requires the presence of a competitive provider's technician (*i.e.*, Bell Atlantic is denied access to a building site without an authorized representative of the competitive carrier or a competitive carrier's technician's presence is necessary for troubleshooting), Bell Atlantic is required to commit to a two hour window for its technician to meet the competitive carrier technician. Missed appointments by either party will be reciprocally compensable by the non-appearing party to the appearing party at Bell Atlantic's tariffed amount or other customary hourly billing rate for its technicians.
- 2) Bell Atlantic will reciprocally compensate competitive carriers for their technician time at a site (at the usual Bell Atlantic technician rate) if either Bell Atlantic demands that the competitive carrier's technician be present even though there are no site-access problems or in cases where a Bell Atlantic network problem caused the outage.
- 3) Bell Atlantic will obtain the competitive provider's acceptance of the restored dedicated transport circuit before closing out the trouble ticket.

In proposing this compliance plan for Bell Atlantic's provisioning and repair of dedicated transport to competitive providers, we emphasize that our business success and our continued access to the capital markets will be largely determined by Bell Atlantic's compliance with the plan and not by Bell Atlantic's payment of penalties. Consequently, we have proposed the penalties we believe are necessary to ensure Bell Atlantic's performance, keeping in mind Bell Atlantic's economic incentive not to provide its competitors with adequate provisioning or repair of dedicated transport.

In summary, Bell Atlantic's application as presently framed does not demonstrate that Bell Atlantic complies with, among other requirements, Competitive Checklist Items Four and Five, relating to the provisioning of loops and local transport. As we recommended in our comments, the Commission should reject the Application until Bell Atlantic demonstrates consistent compliance with these Checklist Items. Central to making that demonstration, Bell Atlantic should adopt our proposal detailed herein.

Chairman Kennard and Commissioners
December 1, 1999
Page 5

We would be pleased to discuss our proposal with you or the Commission's Staff at your convenience. Thank you for the opportunity to express our views on this important matter.

Sincerely,

Jonathan Askin
Vice President – Law
The Association for Local
Telecommunications Services

Carol Ann Bischoff
Executive Vice President and General Counsel
Competitive Telecommunications Association

James Falvey
Vice President, Regulatory Affairs
e.spire Communications, Inc.

Richard J. Metzger
Vice President, Regulatory and Public Policy
Focal Communications Corporation

Douglas G. Bonner
Arent Fox Kintner Plotkin & Kahn, PLLC
Counsel to Omnipoint Communications, Inc.

David S. Turetsky
Senior Vice President
Law and Regulatory
Teligent, Inc.

cc: Magalie Roman-Salas, Esq.
Randal Milch, Esq.
Frances Marshall, Esq.
Chairman, Commissioners, and Legal Assistants
Lawrence Strickling, Esq.
Robert Atkinson, Esq.
Carol Matthey, Esq.
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Dee May
Director
Federal Regulatory Affairs



November 19, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 99-295: In the Matter of Application of Bell Atlantic Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in New York

Dear Ms. Salas,

At the request of Ms. Claudia Pabo of the Common Carrier Bureau Policy Division, Bell Atlantic is filing the attached response to questions she raised regarding transport related issues.

As outlined in the Public Notice (DA-99-2014) issued by the FCC on September 29, 1999, the 20 page ex parte limit does not apply to this ex parte since Bell Atlantic is responding to direct questions raised by Commission staff and reviewed material addressed in the aforementioned proceeding. The page limitation also does not apply to the material attached because it was provided in response to questions raised by the staff.

Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Dee May".

Attachment

cc: A. Kearney
J. Adams
C. Pabo

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Bell Atlantic
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Washington, DC 20005
202 336-7824 Fax 202 336-7922
E-Mail: Dolores.A.May@BellAtlantic.com

Dee May
Director
Federal Regulatory Affairs



November 19, 1999

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NOV 19 1999

Ms. Claudia Pabo
Common Carrier Bureau-Policy Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Application by New York Telephone Company (d/b/a Bell Atlantic - New York), et al., for Authorization To Provide In-Region, InterLATA Services in New York, Docket No. 99-295

Dear Ms. Pabo:

This letter is submitted in response to your request for information responsive to certain issues raised by a few commenters in the above-captioned proceeding.

1. As explained in Bell Atlantic's reply comments, the issues raised in the comments filed by Teligent, Allegiance, Focal and Omnipoint are related to the provisioning of special access services these carriers ordered from Bell Atlantic's FCC No. 11 tariff. BA-NY Reply Comments at 26-27; Reply Appendix A, Vol. 1, Tab 1 ¶¶ 113-114. These are the same tariffed special access services that Bell Atlantic sells directly to interexchange carriers and other customers. None of these parties ordered the unbundled interoffice transmission facilities that Bell Atlantic provides in compliance with its obligations under the 1996 Telecommunications Act. Bell Atlantic provides unbundled interoffice transmission facilities under its NY PSC 916 Tariff § 5.3 (Appendix H, Tab 3 of Bell Atlantic's 271 Application). In fact, not one of these carriers has ever ordered any unbundled interoffice transmission facilities from Bell Atlantic in New York.

2. Bell Atlantic's provisioning of special access services has nothing to do with whether Bell Atlantic has met the checklist requirement to unbundled local transport facilities. In the *UNE Remand* proceeding, US West argued that it need not unbundle local transport because requesting carriers can purchase its tariffed special access services. The Commission specifically rejected US West's argument because, as a legal matter, special access services are different than unbundled local transport facilities. *UNE Remand Order*, ¶ 67 ("US West maintains that it need not unbundle local transport because requesting carriers can purchase its tariffed special access services. In light of the little weight we assign to the availability of resold services in our analysis, we reject US West's argument."). On the contrary, special access services are really retail services that Bell Atlantic provides to its own customers. The only conceivable relevance of Bell Atlantic's retail performance is as something to compare its wholesale performance to in a parity analysis. But it is not itself a checklist item.

3. The special access services ordered by these carriers are also different than the unbundled transport facilities available under Bell Atlantic's unbundled network element tariff and different than the Commission's definition of unbundled transport. The Commission defines unbundled interoffice transmission facilities to include "[d]edicated transport . . . that provides telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, App. C at 6 (Nov. 5, 1999) ("*UNE Remand Order*"). Bell Atlantic's unbundled network element tariff closely tracks this definition. See NY PSC 916 Tariff § 5.3 ("The Telephone Company also provides access to unbundled dedicated transmission facilities between the Telephone Company's central offices (COs) or between such offices and those of Telecommunications Carriers"). What the commenters ordered is something very different, special access. Bell Atlantic's interstate tariff defines special access services as transmission services where at least one end is located at a customer premises. See Bell Atlantic FCC No. 11, Section 7.1 ("a transmission path to connect customer designated premises, a customer designated premises and a WATS service office (WSO), a customer designated premises and a network controller location or a customer designated premises and an Expanded Interconnection multiplexing node or virtual collocation arrangement"). Teligent, Allegiance and Focal have ordered special access services between their customers' premises and their switches, not between the points defined by the Commission as part of unbundled interoffice transmission facilities. See, e.g., Focal Comments at 2 ("Focal offers dial tone to its customers by purchasing circuits from BA-NY's interstate access tariffs. The circuits are connected from the Focal switch to the customer's premises"); Teligent Comments, Lissemore Declaration ¶ 2 ("Teligent's internal network needs require it to purchase T1 (or greater capacity) facilities which Teligent uses to directly connect its network to customer locations"). Similarly, Omnipoint has ordered special access services from its cell site locations to its switch. See Omnipoint Comments at 7 ("Omnipoint relies exclusively on BA to provision DS-1 or T-1 high capacity loops in New York . . . between the switch and each of Omnipoint's cell sites"). These special access services that the carriers have actually ordered are different than unbundled local transport facilities because in each case they extend beyond a carrier's wire center or switch.

4. During the Carrier to Carrier proceedings, standard intervals were established for provisioning unbundled local transport facilities. Where the facilities exist, the standard interval is 15 business days. Where the facilities do not exist, the interval is negotiated. These intervals were included in Attachment B (Appendix L, p. 142 of 165) to the Dowell and Canny Declaration.

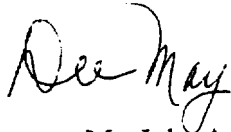
5. Bell Atlantic's provisioning performance for unbundled transport facilities is captured in the Carrier to Carrier metrics included in the record here. See Dowell and Canny Declaration, Attachment D; Dowell and Canny Reply Declaration, Attachment C. These Performance Reports include Bell Atlantic's on time completion rate for unbundled interoffice transmission facilities and compare it to Bell Atlantic's performance on retail special services (PR-4-01). For August and September, Bell

Atlantic's on time completion rate for unbundled interoffice transmission facilities was the same as or better than the rate for its retail special services. These Performance Reports also include the average completion interval for unbundled interoffice transmission facilities (PR-2-09). Because this metric captures orders where facilities are available and those where facilities are not available, the average completion interval varies from month to month based on the mix of orders.

6. Interconnection trunks are different than unbundled local transport. Interconnection trunks actually include the switch ports that provide carriers with a connection to a switch for the transmission and routing of telephone exchange service and exchange access. Because interconnection arrangements are different from unbundled local transport facilities, they take longer to provision. Unbundled local transport facilities simply provide a transmission facility between two points, typically using collocation arrangements. Interconnection arrangements, on the other hand, require switch translations associated with the provisioning of the trunks (*i.e.*, the switch must be programmed to route the appropriate carrier's traffic out of that switch) as well as coordination of the transport capability. In the case where the CLEC uses unbundled interoffice transmission facilities as the transport facilities, those facilities are only a component of the interconnection arrangement.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dee May".

cc: Mr. John Adams
Ms. Andrea Kearney



Teligent, Inc.
825 Slaters Lane, Suite 102
Alexandria, Virginia 22314
voice: 703.299.5875
fax: 703.299.5825

April 27, 1999

Bruce Wagner
Regional Vice President
Northeast

Jacob J. Goldberg
President
Telecom Industry Services
Bell Atlantic Network Services
1095 Avenue of the Americas
Room 4043
New York, New York 10036

Re: *Results of Teligent - Bell Atlantic Meeting*

Dear Jack,

Thank you so much for arranging the meeting with Paul Lacouture last week to discuss the circuit delivery problems that Teligent is encountering with Bell Atlantic. We appreciate the attention that you and Mr. Lacouture are giving to these issues. At the meeting, we welcomed the suggested plan of action that, with your continued commitment and prompt implementation, we hope will greatly improve Bell Atlantic's delivery of service to Teligent.

It is Teligent's understanding that the agreed-upon plan of action includes the following:

1. Bell Atlantic will assign a Network Engineer/Planner to work with Teligent to determine the most effective way to deploy the Bell Atlantic portion of our network build. Teligent will continue to provide all necessary information to facilitate this process, including 90-day network plans on a 30-day rolling basis.
2. Bell Atlantic will assign Service Managers to help facilitate maintenance and provisioning issues.
3. Bell Atlantic will assign Project/Program Managers for both the north territory and the south territory, to coordinate the network build and provide timely program management and key action initiation.
4. Bell Atlantic and Teligent will cooperate to reduce the number of "customer not ready" ("CNR") incidents, especially in NYC. If possible, Bell Atlantic will assign specific field technicians to Teligent in the NYC area to foster better communication. Teligent and Bell Atlantic will document and discuss all CNR incidents in order to take immediate action to greatly reduce or eliminate them. Bell Atlantic site surveys modeled after existing work you are currently doing with Wireless Carriers, where appropriate, will also help reduce CNR's and missed FOC dates.

5. Given the problems to date and the critical importance of this issue to Teligent, Bell Atlantic will cooperate with Teligent to increase the T-1 circuit delivery run-rate, with a goal of 4 per market per day, or 16 for the entire region per day. Because the delivery of T-1 circuits is dependent upon Bell Atlantic's delivery of DS3's, Bell Atlantic agreed to move forward as quickly as possible with delivery of these backbone circuits.

Overall, Teligent believes that the meeting was highly successful. We appreciate very much Bell Atlantic's senior management's willingness to discuss our problems and suggest positive solutions. We look forward to meeting with the assigned Network Planner in the next few days and to seeing increasing improvements in delivery and service.

Tony, Craig, Bill and I will work together to maintain this momentum. In addition, as we agreed, Tony and I will schedule a meeting with you and Rick Hanna at the end of May to discuss progress.

Again, thanks for a productive meeting. We look forward to the continued, improved relationships between our companies.

Sincerely,



Bruce T. Wagner
Regional Vice President
Northeast

cc: Paul Lacouture
Dave Douglas
Rick Hanna